

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY KE D.C.
05 JUN -6 AM 6:50

CLAYTON JACKSON,

Robert R. Di Tollo
CLERK, U.S. DIST. CT.
W. D. OF TN. MEMPHIS

Plaintiff,

v.

Case No. 04-cv-02676-BBD-dkv

MEMPHIS LIGHT, GAS & WATER,

Defendant.

**DEFENDANT MLGW'S MOTION TO STRIKE NEWSPAPER ARTICLE
AND PARTIAL SLIP OPINION ATTACHED TO THE COMPLAINT AND TO
STRIKE LANGUAGE REQUESTING RELIEF REGARDING NON-PARTIES,
WITH SUPPORTING MEMORANDUM**

MOTION

Pursuant to Federal Rule of Civil Procedure 12(f) Defendant Memphis Light, Gas & Water Division ("MLGW"), through undersigned counsel, hereby moves for an order striking from the Amended Complaint the following:

1. Newspaper article attached to the Complaint.
2. Excerpts from slip opinion in State of Tennessee v. Preston Carter attached to Complaint.
3. Language requesting relief, contained in paragraph 10 of the Complaint and in "Prayer for Relief" of Complaint regarding persons identified as "Lee O. Tate, Jr." (or "Lee O. Tate") and "Joseph Kirkwood" or "Joe Kirkwood."

MOTION GRANTED

DATE: 6-3-2005

Bernice Bouie Donald
BERNICE BOUIE DONALD
U.S. DISTRICT JUDGE

(12)

SUPPORTING MEMORANDUM

Federal Rule of Civil Procedure 12(f) authorizes the court to “. . . order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.”

1. Challenged Attachments

Federal Rule of Civil Procedure 10(c) reads as follows:

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Various items are attached to the Complaint. This Motion only challenges two of those attachments. The challenged attachments are the following:

1. An apparent portion of a page from a newspaper with a circle drawn around an article headlined “Indecent Exposure to Youths Alleged;” and
2. Portions of a slip opinion apparently filed February 8, 2002 in the Court of Criminal Appeals of Tennessee at Jackson in State of Tennessee v. Preston Carter.

The newspaper article attached to the Complaint is not the type of documentary evidence or “written instruments[s]” which Federal Rule of Civil Procedure 10(c) intended to be incorporated into, and made a part of, the Complaint. See generally Wright & Miller, Federal Practice and Procedure: Civil 2d § 1327, p. 763 and n. 7 (2d ed. 1990). See, e.g., Perkins v. Silverstein, 939 F.2d 463, 467, n. 2 (7th Cir. 1991).

The portions of the opinion from Tennessee v. Preston Carter attached to the

Complaint should be stricken because the opinion, on its face, has no legal or factual relation to the controversy in this case and is thus immaterial. The opinion involves an appeal of a murder conviction that resulted in imposition of a death sentence.

2. Challenged Language Regarding Mr. Tate and Mr. Kirkwood

In paragraph 10 of the Complaint the following sentence appears: "Secondly, I ask MLGW to reinstate Mr. Lee O. Tate, Jr. and Mr. Joseph Kirkwood because they cared strongly for MLGW's success and its customers."

The Complaint's prayer for relief asks, *inter alia* that "Defendant be directed to re-employ Mr. Lee O. Tate and Mr. Joe Kirkwood . . ."

Neither of Mr. Tate or Mr. Kirkwood are named as plaintiffs in this lawsuit. This lawsuit is not filed as a class action and no assertion is made in the Complaint that the requirements of a class action are met. Accordingly, no basis exists for award of any relief to Lee O. Tate, Jr. (also referred to as Lee O. Tate) and Joseph Kirkwood (also referred to as Joe Kirkwood). Thus, the language quoted above seeking award of relief to Mr. Tate or Mr. Kirkwood is "immaterial" and should be stricken from the Complaint.

Respectfully submitted,

HARRIS SHELTON HANOVER WALSH, PLLC

By: _____

Elijah Noel, Jr. (#8655)

Attorney for Defendant, MLGW

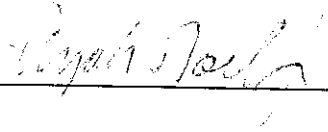
2700 One Commerce Square

Memphis, TN 38103

(901) 525-1455

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Entry of Appearance on Behalf of Defendant has been served via First Class Mail, postage prepaid, on Mr. Clayton Jackson, 3864 Mickey, Memphis, TN 38116, this 10th day of February, 2005



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Notice of Distribution

This notice confirms a copy of the document docketed as number 12 in case 2:04-CV-02676 was distributed by fax, mail, or direct printing on June 6, 2005 to the parties listed.

Elijah Noel
HARRIS SHELTON DUNLAP COBB & RYDER
One Commerce Square
Ste. 2700
Memphis, TN 38103

Clayton Jackson
3864 Mickey
Memphis, TN 38116

Honorable Bernice Donald
US DISTRICT COURT